IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

W.P.No. 89 of 2004 (S/B)

and other connected writ petitions

Date of decision: 27th October, 2004

For the approval of:

Hon'ble Chief Justice V.S. Sirpurkar C.J.

Hon'ble Mr. Justice P.C. Verma, J..

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

A

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

1. **Writ Petition No. 89 of 2004 (S/B)**

Dr. Sharad Bhatt & others. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

2. **Writ Petition No. 94 of 2004 (S/B)**

Renu Khetwal & others. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

3. **Writ Petition No. 96 of 2004 (S/B)**

Sharad Chandra Mishra & others. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

4. **Writ Petition No. 97 of 2004 (S/B)**

Kiran Kumar Pant & others. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

5. **Writ Petition No. 98 of 2004 (S/B)**

Rekha Joshi & others. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

6. **Writ Petition No. 99 of 2004 (S/B)**

Manbirendra Singh & others. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

7. **Writ Petition No. 100 of 2004 (S/B)**

Shiv Chand Singh ……. Petitioner

Versus

State of Uttaranchal & others. ……. Respondents

8. **Writ Petition No. 103 of 2004 (S/B)**

Smt. Kamla Fuloria. ……. Petitioner

Versus

State of Uttaranchal & others. ……. Respondents

9. **Writ Petition No. 104 of 2004 (S/B)**

Charu Chand Dhondiyal & others ……. Petitioners

Versus

State of Uttaranchal & others. ……. Respondents

10. **Writ Petition No. 106 of 2004 (S/B)**

Rajendra Prasad Garola & others. ……. Petitioners

Versus

State of Uttaranchal & others. ……. Respondents

11. **Writ Petition No. 108 of 2004 (S/B)**

Daya Prakash Yadav & others. ……. Petitioners

Versus

State of Uttaranchal & others. ……. Respondents

12. **Writ Petition No. 113 of 2004 (S/B)**

Deep Chandra ……. Petitioner

Versus

State of Uttaranchal & others. ……. Respondents

13. **Writ Petition No. 114 of 2004 (S/B)**

Pankaj Kumar Upreti ……. Petitioner

Versus

State of Uttaranchal & others. ……. Respondents

14. **Writ Petition No. 119 of 2004 (S/B)**

Poonam Shah & others. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

15. **Writ Petition No. 121 of 2004 (S/B)**

Lakshmi Dutt …..… Petitioner

Versus

State of Uttaranchal & others. …..… Respondents

16. **Writ Petition No. 122 of 2004 (S/B)**

Akhilesh Bhatt …..… Petitioner

Versus

State of Uttaranchal & others. …..… Respondents

17. **Writ Petition No.126 of 2004 (S/B)**

Anit Rani …..… Petitioner

Versus

State of Uttaranchal & others. …..… Respondents

18. **Writ Petition No. 130 of 2004 (S/B)**

Manoj Kumar Uniyal & another. …….. Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

19. **Writ Petition No. 155 of 2004 (S/B)**

Adesh Kumar & another. …..… Petitioners

Versus

State of Uttaranchal & others. …..… Respondents

20. **Writ Petition No. 173 of 2004 (S/B)**

Abinash Kumar …..… Petitioner

Versus

State of Uttaranchal & others. …..… Respondents

21. **Writ Petition No. 293 of 2004 (S/B)**

Anil Kumar & others. …..… Petitioner

Versus

State of Uttaranchal & others. …..… Respondents

Mr. R.G. Padia, learned Senior Counsel assisted by Mr. Manoj Tiwari, learned counsel for the petitioners.
Mr. K.P. Upadhyaya, Brief Holder for the State.

Coram: Hon'ble V.S. Sirpurkar, C.J.,
Hon'ble P.C. Verma, J.

Dated: October 27th , 2004

(Per Hon'ble the Chief Justice)

1. This judgment shall dispose of all the writ petitions mentioned above since the controversy involved and the reliefs claimed are identical and also since common arguments were advanc3ed in all these writ petitions. In writ petition No. 89 of 2004 (S/B), the following prayers are made:

i. To issue a wit, order or direction in the nature of certiorari for quashing / setting aside the advertisement dated 14.3.2004 (Annexure-15 to the writ petition) issued by the Public Service Commission, Uttaranchal at Haridwar.
ii. To issue a writ, order or direction in the nature of mandamus to restrain the respondents from interfering in the functioning of the petitioners as Lectures in their respective subjects in question till such time their case for regularisation is considered in accordance with law.
iii. To issue a writ, order or direction in the nature of mandamus declaring the cut off date 30.6.1998 fixed by Rule 4(1) of Uttaranchal Regularisation of Ad-hoc Appointments (On posts within the purview of Public Service commission) Rules, 2002 as arbitrary and illegal.
iv. To issue a writ, order or direction in the nature of mandamus directing the respondents to consider the case of the petitioners for regularisation by treating the cut off date as 7.8.2002 i.e. the date of notification of the said Rules and regularise the services of the petitioners in their respective subjects, subject to their fulfilling the eligibility criterion.
v. To issue a writ, order or direction in nature of certiorari for quashing the Government orders dated 27.1.2001, 12.7.2002 and 10.7.2003 (Annexure No. 2, 6 and 8 to the writ petition).
vi. To issue a writ, order or direction in the nature of mandamus commanding the respondents to pay salary in the regular pay scale as prescribed for the regularly selected lecturers in the State along with all consequential benefits including the arrears of salary w.e.f. the date of appointment of the petitioners.

vii. To issue a writ, order or direction in the nature of mandamus commanding the respondents to pay to all the petitioners their arrears of salary in respect of the period of summer vacation, which has illegally been withheld by the respondents in violation of the judgment of the Apex Court in the State of Haryana Vs Rattan Lal.

viii. To issue a writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case, so that justice be done between the parties.

ix. To award cost of the writ petition throughout to the petitioners as against the respondents.

x. To issue a writ, order or direction in the nature of certiorari for quashing the Government order dated 18.7.2001 (Annexure 12 to the writ petition).

2. <u>Basic Facts and Challenge:</u>

All the petitioners are visiting lectures in various colleges. They were appointed to these posts on various dates from the year 2001. There were 185 posts of lecturers lying vacant in 34 Government Degree Colleges and the post Graduate Colleges in the State of Uttaranchal and, therefore , a policy decision was taken by the State Government that the vacancies would be filled-up vide a Government Order dated 27.01.2001. This decision was taken as the education system was adversely affected because of the paucity of lectures and the possible delay in appointment on these posts and also in public interest. However, this arrangement was to be only till selection and the availability of regularly appointed lecturers on the following conditions:

1. That such visiting lecturers should have the qualifications fixed by the U.G.C. i.e. the University Grants Commission and they were to receive Rs. 100/- per hour to the maximum of Rs. 5,000/-.
2. That the maximum age limit in their case was to be 35 years.
3. That they should be selected by a screening committee consisting of the Joint Director, Higher Education as its Chairman along with the Subject Expert and the Principal of the concerned College.

4. That the contract of appointment of such a selected candidate would come to and end on appointment of a regularly selected candidate.
5. That Such visiting lecturers would be selected and invited only against such posts, which are full-time vacant posts.
6. That the honorarium paid to such lecturers would be out of Head Non-plan relating to accepted posts. T
7. Such selected candidate, prior to commencement of his duty, should give an undertaking that on the basis of the selection he / she would not insist for Regularisation or, as the case may be, the regular selection.

In pursuance of this decision, an advertisement was published in the newspapers in the third week of February, 2001 notifying the 185 vacancies. A second advertisement was published on 17.08.2001. In the first advertisement, the age limit was shown as 35 years and perhaps, as the enough number of candidates were not available, in the second advertisements, the age limit was increased to maximum of 40 years as on 31.07.2001. In so far as the qualifications are concerned also, in the second advertisement a slight change was effected suggesting therein that even the candidates, who had obtained their Ph. D. by year 2002, were now declared to be qualified. This was in sharp contradiction to the earlier advertisement, where a candidate had to have the qualifications as fixed by the University Grants Commission i.e. Doctorate / M. Phil. Examination by 1993. As stated earlier, after the selection the petitioners were appointed to work as lectures in various colleges and they all joined their duties. The appointment orders came to be passed in case of practically all the petitioners in the month of August, 2001. Again, on 12th July, 2002, another Government Order No. 624/Higher Education/2002-03 (18)/2002 was issued, whereby such visiting lectures, who were selected and working in the academic session 2001-02 were to be continued for the academic session 2002-03 and they would be nomenclatured as Visiting Lectures. It is to be seen that in their

appointment for the year 2001-02, the nomenclature of their post was Visiting Faculty. Their appointments were to be continued for the period of 1.07.2002 to 30.04.2003. They were to be paid Rs. 250/- per hour instead of Rs. 100/-per hour and the maximum pay was to be Rs. 8,000/- instead of Rs. 5,000/- Every visiting lecturer had to remain present on all the working days and they were to get the leave maximum to the extend of 10 days in the contract period. Every visiting lecturer had to deliver minimum 40 lectures a month and had to complete the norms. If, for any reason, the norms were not reached, such norms had to be completed in the next month. All the petitioners were invited and were directed by a letter dated 20.07.2002 to report to the concerned Principal. This arrangement continued till the end of the academic session 2002-03 and the Government, thereafter, came out with another Government Order dated 10.07.2003, whereby such visiting lectures, who were working in the academic session 2002-03 were to be continued for the academic session 2003-04 and their contract period was to be between 1.07.2003 till 30.04.2004. It was provided that if after 30.04.2004, there was any necessity, then they could be continued for the work relatin to examinations, for which they were to be paid at the rat of three lectures for the examination of three hours. All the lectures were to be paid the honorarium of Rs. 8,000/- per month (the condition of Rs. 250/- per lecture was not to be found in this Government Order). All the other conditions were to be identical. It was, however , further provided in the Government Order that fresh candidates would not be appointed as visiting lecturers as against the vacant posts and for such fresh vacancies, retired teachers could be invited . Accordingly, all the petitioners were intimated by a letter dated 22.07.2003 for reporting to their Principals. It was, however, informed that if they fail to report, their appointment would be treated as cancelled. It seems that some of lecturers were transferred from one College to other for the academic session 2003-04.

3. It is to be noted that the State Government has framed rules called Uttaranchal Higher Education (Group A) Service Rules, 2003 [Uttaranchal Uchchattar Shiksha (Samuh 'Ka') Sewa Niyamawali, 2003] under the proviso to Article 309 of the Constitution of India vide notification No. 703/HE/2003-3(14) 2001 dated 25.08.2003. These were the rules providing for the cadre posts as also providing for the modality for recruitment to the cadre along with the qualifications and the procedure for selection, appointments, pay etc. In short, these were the service rules. Under these rules, the term of 'visiting lecturer' has been defined vide Rule 3(n) as under:

> "Visiting Lecturer means the invite candidates for teaching in Government Degree Colleges since academic session 2001-02 on contract under G.O. 457/H.R.D./2001-3(6) 2000 dated 27.01.2001."

Vide Rule 4, the cadre strength is fixed and it provides 883 posts for the Lecturer / Lecturer, Senior Scale / Lecturer, Selection Grade. Rule 5 provides for the modality of recruitment and in Category IV(b), it is provided that lecturer shall be recruited by direct recruitment through Public Service Commission, Uttaranchal. Rule 8 provides the academic qualifications for the post of lecturer as the qualifications prescribed by the University Grants Commission and approved by the Government of Uttaranchal. Rule 9 is, however, extremely important. It is under the heading 'preferential qualification'. We are not concerned with Rule 9(a),(b) and (c). Rule 9 (d), (e) and (f) are, however, quoted below in view of their relevance:

> "9(d) Candidates working as Visiting Lecturers in Government Colleges of the State shall get maximum five percent bonus marks of the total marks obtained in the Examination / Interview provided the candidates working as Visiting Lecturer possesses the minimum qualifications prescribed by the Government for the post of Lecturer;
>
> (e) Candidates working as part-time Lecturer in Govt. College of the State, if eligible, shall get maximum five percent bonus marks of the total marks

obtained in the Examination / Interview provided the Part-time Lecturer possesses the minimum qualifications prescribed by the Government for the post of Lecturer;

(f) Only those Visiting lecturers & Part-time Lecturers shall be given preference in case of selection for the post of Lecturer in Government Colleges, who are working as above on or before the date of notification of Service Rules. This is not a permanent provision."

Rule 10 provides for the maximum and minimum age for the direct recruitment of lectures, which is 21 years minimum and 35 years maximum on January 1 of the year in which the recruitment is to be made. Rule 10(b) is, again, relevant because it concerns the working Visiting Lecturers like the petitioners and it runs as under:

"10(b) The working Visiting Lecturers and Part-time Lecturers in Government College of the State who possess prescribed qualifications will be given relaxation in the maximum age limit to the extent needed for the post provided the Visiting Lecturer and Part-time Lecturer were under the prescribed age limit at the time of initial appointment as Visiting Lecturers / Part-time Lecturers."

In short, these rules recognize the class of visiting Lecturers and also provide preferential treatment to them in the matter of their regular selection as against the post of Lecturer.

4. Even before these Rules came into existence, the State Government on 07.08.2002 has passed the Uttaranchal Regularisation of Ad-hoc Appointments (on posts within the purview of the public Service Commission) Rules, 2002 (to be called as Regularisation rules for short). These Regularisation rules are in exercise of the power under Article 309 of the Constitution of India. Rule 4 of the Regularisation rules runs as under:

"4. Regularisation on ad-hoc appointments. – Any person who-

(i) was directly appointed on ad-hoc basis before June 30, 1998 and is continuing in service as such on the date of commencement of these rules;

(ii) possessed requisite qualification prescribed for regular appointment at the time of ad-hoc appointment; and

(iii) has competed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of the record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee.

(4) The appointing authority shall prepare an eligibility as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee alongwith the character rolls and such other records of the candidates as may be considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4).

(6) The Selection Committee shall prepare a list of the selected candidates, the names in the list being arranged in order of seniority, and forward it to the appointing authority."

It is needless to mention here that the post of a Lecturer in the Government Colleges is under the Public Service Commission. Under the above-mentioned regularisation rules, as would be clear from the language of Rule 4, which we have quoted above, the person who was directly appointed on ad-hoc basis prior to 30.06.1998 and who was continuing in service on the date on 7.08.2002 possessing the requisite qualifications for regular appointment at the time of his ad-hoc appointment and had completed there years of service or after he

completes three years of service, was made entitled to be considered for regular appointment in available permanent or temporary vacancy Such consideration was to be on the basis of his record and suitability, for which purpose, an eligibility list was to be prepared in the order of seniority, in keeping with Rule 4(4) of the regularisation rules, by a Selection Committee made for that purpose.

5. As a sequel to the Uttaranchal Higher Education (Group A) Service Rules, 2003, an advertisement came to be issued on 14.03.2004 for 200 posts of Lecturers. Out of these 200 posts, 45 posts are reserved for the Scheduled Castes, 1 post for the Scheduled Tribes, 23 posts for the Other Backward Classed and 131 posts are meant for open category. It is specifically provided in clause (4) of Preferential Qualification that the working visiting lecturers would be awarded 5% of the total marks earned by them as bonus provided such visiting lecturers are qualified and working as visiting lecturers. Significantly enough, it is after this advertisement is issued that the petitioners have come out to file the present writ petitions challenging the afore-mentioned regularisation rules and more particularly, Rule 4 therein, which provides for the consideration of the ad-hoc appointments made for to 30.06.1998 for the purpose of regularisation.

6. **Challenge of the petitioners and the rival claims of the respondents:**

i. The petitioners say that the fixation of cut off date as 30.6.1998 is arbitrary as firstly, there was no rhyme or reason and also there was complete absence of material as to why this date was fixed and thus, it offends Article 14 of the Constitution of India. Shortly stated, their strategy appears to be that if this date is found to be arbitrary, then the date on which the regularisation rules came into existence, namely, 7.08.2002 would be the cut off date and thereby, all of them would get a right to be considered against the permanent or temporary vacancies

on the basis of their record and suitability before any regular appointment is made in such vacancies.

ii. The second leg of the challenge is that these rules have been passed by the State of Uttaranchal, which, itself, came into being on 9.11.2000 in pursuance of the U.P. Reorganisation Act. If on 30.6.1998, the State of Uttaranchal, itself, was not there, then it could not have fixed a date prior to its creation as a cut off date.

iii. It is also the challenge that in providing the service conditions of the employees, who were the employees of the erstwhile State of U.P., the rules have an extra-territorial legislation and are bad for that reason.

7. With this challenge to the regularisation rules, the petitioners have also challenged the afore-mentioned advertisement dated 14.3.2004 on the ground that it is in complete derogation to the percentage of reservation in as much as it is not in keeping with the percentage provided by the U.P. Reservation act, 1994 nor is it in conformity with the reservation policy fixed by the State of Uttaranchal. It is pleaded in this behalf that there is a Government Order passed on 18.7.2001, whereby the State of Uttaranchal had fixed the following quota for the different categories, that was:

Scheduled Castes	-	19%
Scheduled Tribes	-	4%
Other Backward Classes	-	14%
Total	-	37%

The contention of the petitioners is that before the reorganisation of the State of Uttar Pradesh, the provisions of U.P. Reservation Act, 1994 were applicable in the territories now comprised within the State of Uttaranchal and by virtue of U.P. Reorganisation Act, 2000, the said Act was still applicable so long as it is not repealed by the successor State of Uttaranchal. They, therefore, contend that, firstly, the State of Uttaranchal could not have

passed the Government Order dated 18.7.2001 without passing the Legislation on the subject. It is pointed out that the different percentages, than the once covered under the U.P. Reservation Act, 1994, could not have been effected by merely issuing a Government Order under Article 162 of the Constitution of India without passing a proper Legislation. In support of their contention, the petitioners heavily rely on Section 86 of the U.P. Reorganisation Act and suggest that a change in the reservation policy could have been effected only be legislature and not by an executive order. Thus, as if this is not sufficient, the petitioners, further, argued that even if the Government Order dated 18.7.2001 was valid, the advertisement was not in keeping with the percentages therein in respect of the reservations. In short, the petitioners want to thwart the efforts on the part of the Government to fill-up the posts by regularly selecting and appointing the lecturers and instead, claimed a writ for their own regularisation on the basis of the regularisation rules.

8. The petitioners do not stop here and claimed that though they had agreed to work on lesser salary by applying the principle of equal work equal pay, they should have been paid the salary of a lecturer in the regular scale and should have also been paid the salary for the summer vacations. It is contended that merely because the petitioners were not in a position to bargain with the Government owing to their unemployedness, they could not be coerced into working as lecturers and doing the identical job of the lecturers on much inferior service conditions. The petitioners, therefore, prayed for the direction to the Government for payment of their salary at the rate of regular scale made applicable to the petitioners along with the summer salary etc. on the basis of the principle of Equal Work Equal Pay.

This, in short, is the scope of the writ petitions as they are field. It is at the fag end of the arguments that the petitioners also prayed for quashing the Government Order dated 18.7.2001 relating to the reservation policy applicable to the State of Uttaranchal. This was

necessitated because during the arguments, it was pointed out that there was no challenge to the validity of that Government Order.

Shortly stated, the petitioners have the following prayers:

1. To quash clause (4) of the aforementioned regularisation rules and consequently regularise the services of the petitioners as lecturers.
2. To quash the Advertisement dated 14.03.2004.
3. To quash the Government Order dated 18.7.2001.
4. To direct the Government to pay their arrears of salary to be calculated on the basis of the regular pay scale of the lecturers.

9.i. As against this, the respondents very vehemently contend that the petitioners, who were employed as visiting faculty to begin with and were continued as visiting lecturers, are a definite class as contemplated and defined under the Uttaranchal Higher Education (Group A) Service Rules, 2003 (from hereinafter called as "Education Service Rules' for short) and they could not possibly claim the status of ad-hoc lecturers. It is pointed out that none of the petitioners was an ad-hoc lecturer in the erstwhile State of U.P. and they have all been employed only after the State of Uttaranchal came into being on 9.11.2000 and as such, regularisation rules were not meant for the persons like the petitioners and in fact, those rules were made only for the persons in ad-hoc services. It is pointed out that while the Education Service Rules are meant specifically for those in education service, the regularisation rules are the general rules meant for all the service coming under the purview of Public Service Commission. As a sequel to this argument, it is contended that the petitioners have no locus whatsoever to challenge the regularisation rules as they are meant for a totally different class. The further argument of the respondents is that if the petitioners are not to be governed by the regularisation rules at all, they could not possibly find any fault with Rules 4 therein and claim consideration for regularisation on the basis

of that Rule. The respondents want to nip the petitioners' case in the bud by saying that they cannot have any possible challenge against the regularisation rules. It is further reiterated that the regularisation rules and more particularly, Rule 4 by its plain language, itself, provides that it is meant only for persons, who were appointed in the erstwhile State of U.P. by was of ad-hoc appointments. The respondents point out that there is an essential difference between the ad-hoc appointments and the contractual appointments. Relying on the definition of visiting lecturers in the Education Service Rules, the respondents submit that all the petitioners, who were appointed on contract in the year 2001, would by themselves make a class not comparable to the class of ad-hoc employees. For that matter, it is contended that there was no ad-hoc lecturer available in the State of U.P.

ii. It is then contended by the respondents that there are definite reasons and material available to fix a cut-off date at 30.6.1998. It is, then pointed out that by reason of Section 74(2) of the U.P. Reorganisation Act, the State of Uttaranchal ahs its sovereign legislative powers as also the executive powers to pass the rules applicable to such employees, who have become or would become the employees of the State of Uttaranchal shedding off their character as the employees of the State of U.P. and merely because the State of Uttaranchal came into being on 9.11.2000, it cannot be said that it has no power to provide a cut off date prior to its coming into being. It is also contended by the respondents that there will be no question of cut off date being arbitrary and more particularly, there cannot be a comparison between the two separate classes and that is how the State wants to repel the challenge under Article 14 to the Constitution of India.

iii. It is then contended by the respondents that there will be no question of any extra-territorial legislation as the employees, in respect of whom these regularisation rules have been framed, had already shed-off their character as the employees of the State of U.P.

and they, for all the practical purposes, would become the employees of the State of Uttaranchal.

Even at the cost of repetition, the State Government makes a basic challenge to the petition on the ground that these rules were not applicable to the petitioners at all.

10. Regarding the challenge to the advertisement, it is pointed out that because of the rosters and the availability of the posts as also the number of the reserved candidates being already in service, the particular number of posts, alone, were put in the reserved category.

Respondents, further, submit that there cannot be a challenge to the Government Order dated 18.7.2001 merely on the ground that it is no passed by the legislature. The respondents heavily rely on Section 86 of the U.P. Reorganisation Act and submit that there will be no question of amending the U.P. Reservation Act, 1994 by the Government Order dated 18.7.2001 and the State of Uttaranchal has total authority to decide upon their policies of reservation as also to adopt the modalities to effectuate those policies. It is therefore, contended that the Government Order dated 18.7.2001 is a perfectly valid instrument.

11. Respondents, further, urged the there was no comparison between the contractual lectures and the regularly appointed lecturers in so far as their appointments, responsibilities, selection or the nature of duties are concerned and, therefore, the claim for the regular scale is unsustainable. The respondents point out that there is no application of the principle of Equal Work Equal pay in this case because visiting lecturers (contractual lecturers), like the petitioners, are a separate class by themselves no comparable to the regularly selected lecturers.

12. The State, as an additional contention, also contends that, in fact, the State has tilted in favour of the said visiting lecturers like the petitioners in providing the preferential treatment to them in the

Education Service Rules and they can legitimately compete with other on the basis of the preferential treatment and instead of assailing the advertisement and thwarting the attempts on the part of the State Government to appoint regularly selected lectures, it would be better if they took part in selection process introduced by the advertisement. On this ground also, the State repels the challenge to the advertisement.

13. The following questions, therefore, all for consideration:

(1) Do the petitioner have any locus standi to challenge the Uttaranchal Regularisation of Ad-hoc Appointments (on posts within the purview of Public Service Commission) Rules, 2002 and more particularly the Rule 4 thereunder?

(2) Is the cut-off date fixed by Rule 4 arbitrary and is the Rule hi by the contravention of Article 14 of the Constitution of India on that account?

(3) Are the rules bad as they amount to extra territorial legislation?

(4) Is the impugned advertisement dated 14.03.2004 bad on account of percentage of reservation therein being in variation to the U.P. Reservation Act, 1994 and is the Government order dated 18.07.2001 bad on account of the fact that it amounted of an amendment of legislation (U.P. Reorganisation Act, 2000) by way of executive order?

(5) Was the State Government justified in requiring the petitioners to work on fixed salaries and refusing them the regular pay scales of Lecture?

(6) Can any relief be granted to the petitioners?

Question Nos. 1, 2 and 3:

14. These three questions can be conveniently considered together as they pertain to the validity of the Regularisation rules. We have already pointed out earlier that the strategy in challenging the Rule

appears to be to get the cut the off date of 30.06.1998 quashed and then as a sequel to the quashing of the date, claim the said date to be 07.08.200, when the petitioners entered into the contract of service. In short, the petitioners' strategy appears to be, that if the cut-off date is quashed, then there would be not cut of date and at any rate the cut off date would be starting from the date of the services of the petitioners and they would be then entitled for consideration for regularisation. Therefore before venturing to test the constitutionality of these Rules in general and Rule 4 in particular, it has to be seen whether the petitioners have any concern or nexus with these Rules.

15. A mere glance on these Rule suggest that these Rules are meant only for the employees who were serving with the erstwhile State of U.P. and who eventually were made over to the State of Uttaranchal under the provision of the U.P. Reorganisation Act, 2000. The basic fact, which cannot be forgotten is, for the applicability of these rules, the concerned employee must have been employee of erstwhile State of U.P. and he should have been in service on 30.06.1998. It is again an admitted position the none of the petitioners in all these writ petitions was an employee in the State of Uttar Pradesh. In fact none of these petitioners had even started their career in the State of U.P. and each one of the petitioners entered in service only in the newly constituted State of Uttaranchal. If this is the situation, then one fails to understand as to how the petitioners could be allowed to challenge the Rules, which were made for regularisation or for consideration of regularisation of the erstwhile employees in the States of U.P. It cannot again be forgotten that the Rules were meant for regularisation of the employees, who were appointed as ad hoc employees of the post, which came within the purview of the Public Service Commission. Again, rules were not meant exclusively or the Education Department and there are distinct and separate Rules for the Education Department, which are called Uttaranchal Higher Education (Group A) Service, 2003. One fails to understand as to how the petitioners, who were not even in the

existence in the erstwhile State of U.P. could be allowed to challenge these Regularisation Rules, which were meant only for the ad hoc employees appointed in the State of U.P. and who were in service on 30.06.1998. There is an inherent contradiction in the challenge because, firstly the petitioners were no employees in the State of U.P. and secondly they were also no ad hoc employees. Once this factual position is obtained, the very basis of the challenge falls down. We are, therefore, of the clear opinion that since the petitioner not erstwhile Uttar Pradesh employees and since the Regularisation Rules were meant only for those who were erstwhile U.P. ad hoc employees, there would be no question to permit the persons, like petitioner, to challenge the Rules.

16. Once this position is obtained, there would be no question of our considering further challenge as to whether this amounted to legislation of extra-territorial nature. In our considered opinion, it could not be by any stretch of imagination held to be a legislation of extra territorial nature. After all, when these Rules came into being, they covered the employees who essentially were erstwhile U.P. employees, but had been made over to the Uttaranchal permanently. At the time when the Rules were framed i.e. on 7.8.2002 the State of Uttaranchal was passing the Rules for its own employees, who had cut their ropes and burnt their boats in so far as their return to U.P. is concerned. Once the U.P. employees appointed on ad hoc basis came to Uttaranchal, the State of Uttaranchal had all the authority and legislative potency to decide as to whether such persons should be regularised or not and that is precisely what has been done by these Rules. Therefore, their objection regarding the extra territorial operation also has to fall.

17. A lengthy debate went on to suggest that these petitioners could be termed as the ad hoc employees and nor merely contractual employees. In our opinion such a debate is completely unnecessary. Even if, we hold the present petitioners to be ad hoc employees, the

fact of the mater is that they were not ad hoc employees in the State of U.P. and it is only for the ad hoc employee appointed in the State of U.P., who were made over to the State of Uttaranchal that the present rules had been brought into existence. We shall immediately show that these petitioners were not ad hoc employees at all for simple reason that an ad hoc employee draws a regular pay scale and admittedly these petitioners did not draw any such regular pay scale. Their service was purely of contractual nature and because of this they were described as Visiting Lecturers in their appointment orders. We have deliberately referred to the rules called Uttaranchal Higher Education (Group A) Service Rules, 2003. Under these Rules vide Rule 3(n), there is specific mention of the persons like petitioners. We have already quoted definition of 'Visiting Lecturer' vide this Rule in para 3 of the judgment. We have deliberately quoted in the same paragraph Rule 9 (d), (e) and (f) to suggest that a specific and distinct category of Lecturers was contemplated by these Rules, who as a result of their continuing from the session 2001-2002 on contract under G. O. No. 457/ HRD /2001-3(6) 2000 dated 27.01.2001, were given a favourabel treatment as compared to others competing for the Lecturers' post through their selection by the Public Serviced Commission. Under Rule 9(d), such candidates are to get five percent bonus marks of the total marks obtained in the Examination/ Interview provided of course that while working as Visiting Lecturers, they had the minimum qualification prescribed by the Government for the post of Lecturer. There can be no dispute that the petitioners had such minimum qualification because otherwise they could never have been appointed as Visiting Lecturers at all. We have already pointed out that these Visiting Lecturers had to have the qualification fixed by the University Grants Commission for being appointed as such on contract basis under the aforementioned Government Order dated 27.01.2001. This preferential treatment was shown even to the part-time Lecturers, subject of course of their having minimum qualification. Rule 9(f) provided that only those Visiting Lecturers and Part-time Lecturers could be given such a preference, who were

working on or before the date of notification of the Service Rules. The notification of the service Rules came on 25.08.2003 and without a doubt, all the lecturers were working on that date as contractual Lecturers or as the case may be Visiting Lecturers. The last sentence of the said clause 9 (f) is extremely telling i.e. " This is not a permanent provision." Thereby, these Lecturers were treated as a specific and distinct class and it is for such Lecturers class alone that the State had tilted the balance in their favor by providing a preferential treatment of getting five percent bonus marks on and above their score. This dispels all the doubts about these Lecturers that they were never treated as ad hoc lecturers. They were of course treated as a separate class and, in our opinion Government has rightly made a provision for safeguarding their interest perhaps taking into consideration their there years of service on the fixed salary. Therefore, these Lecturers could never to be treated as ad hoc Lecturers.

18. A very heavy reliance was paced by the petitioners to suggest that they were ad hoc employees on the reported decision in Rudra Kumar Sain and others Vs. Union of India and others reported in (2000) 8 Supreme Court Cases 25 and more particularly in para 19, where the Apex Court has explained the significance of the ad hoc appointment. The Supreme Court therein was considering the significance of the term "ad hoc" as also the term "fortuitous" and "stop gap". The following contents were heavily relied upon:

> "The meaning to be assigned to these terms while interpreting the provisions of the service rule will depend on the provisions of that rule and the context in and the purpose for which the expression are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose, it will be necessary to look not the purpose for which the posts were created and the nature of the appointment

> of the office as started in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as " ad hoc" or "stop gap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature, then the appointment of such a post can aptly be described as "fortuitous" in nature. If the appointment is made to meet the contingency arisen on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then and to meet this contingency, an appointment is made, then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "as hoc" appointment."

From this, the petitioners say that since their appointment was made as a large number of posts were remaining unfilled and that was affecting the education scenario in the Colleges, their appointments were "ad hoc" in nature, though such appointments were for a particular period provided by the contract. The contention is undoubtedly attractive. However, in our opinion, Rudra Kumar Sain's case will not apply for more than one reason. In the first place, there the Supreme Court was considering the question of inter se seniority between the persons who were appointed by way of ad hoc appointment and some others. Such in not the question here. We are concerned with the rights of the petitioners to be regularised and to put in more correctly for being considered for regularisation in that appointment. This is not a case where some posts are created to meet a particular situation. On the other hand, this is a case where a number of posts had remained vacant and undoubtedly there would have been a delay in the appointment of these posts and as such the said appointments were made by a contract for specific period of one year and these Lecturers were then allowed to continue for two more years. They were not provided regular scale of Lecturer. On the other

hand, they were provided with fixed salary. We further point out that their duties were also not identical with regular Lecturers as these Lecturers had no liability to work in the summer vacations and if they were required to work in the summer vacations, they were to be separately paid. Normally, an ad hoc appointment would draw some salary and the regular scale meant for that post, which is obvious from the facts in Rudra Kumar's case. Such is, however, is not the case here. Again, the observations which were relied upon are being read out of context because immediately thereafter the Supreme Court hold that " It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made, As such, this discussion is not intended to enumerate the circumstances or situations in which the appointment of officers can be said to come within the cope of any of these terms. It is only to indicate as how the matter should be approached, while dealing with the question of inter se seniority of officers in the cadre" (emphasis applied). This would clearly explain that the observations made by the Supreme Court quoted above would not apply to the present case where the question of inter se seniority is not for consideration. We, therefore, do not think that the observations are of any help to the petitioners.

19. Three others Supreme Court judgments were heavily relied upon, they being Central Inland Water Transport Corporation Limited and another Vs. Brojo Nath Ganguly and another & Central Inland Water Transport Corporation Limited and another Vs. Tarun Kanti Sengupta and another reported in (1986) 3 SCC 156, and Khagesh Kumar and other Vs. Inspector General of Registration and others reported in 1995 Supp (4) SCC 182 as also Delhi Transport Corporation Vs. D. T. C. Mazdoor Congress and others reported in AIR 1991 SC 201. We are afraid none of the aforementioned judgments is apposite to the present controversy.

In Central Inland Water Transport Corporation Limited and another Vs. Brojo Nath Ganguly's case (Supra), the question of was of

unconscionable contract between the workers and the employer, which was held to be so and, therefore being opposed to public policy, it was held void under section 23 of the Contract Act. The Supreme Court scoffed as obvious inequality of bargaining power between the parties and held that Courts would not only not enforce such contract, but when called upon to do so, strike down the unfair and unreasonable contract. It also held that while considering such contract, all the provisions of the Contract Act must be taken into consideration, which principle was in consonance of the objective to ensure social and economical justice and also keeping in line in spirit of Article 14 of the Constitution. The Court, however, said that cases such as these cannot be enumerated nor illustrated and the Court must judge each case on its on facts and circumstances. Here, it is the contention of the petitioners that they were unemployed educated persons and had no option except to put signatures on the dotted lines, though the contract of service was unconscionable. It was tried to be suggested that, therefore, it was the duty of the Court to strike down such a contract and secure a regular pay scale available to the Lecturers. In the background of the present facts, we do not think that such factual scenario is available in this case. All the petitioners are highly educated persons. Majority of them hold doctorate. They have signed the contract with the open eyes, which was only for one year to being with and was extended to three years. They also accepted extension and they were paid Rs.8000/- per month in the third year of their service, which was commensurate with the regular pay scale, if not equal to it. It is not as if that they could not have secured employment elsewhere. That is not the case pleaded and it indeed cannot be. Once these Lecturers had accepted the contract with the open eyes, they cannot turn back and say that they were a weaker party, had no bargaining power, therefore, had to put their signatures on the contract and that they should be regularised even if they were appointed only for a particular period. We do not think that such approach is reasonable and possible. Again, we cannot ignore the fact that these three years of service has given them additional

advantage of 5 per cent bonus marks of the marks earned by them in the matter of their selection by the Public Service Commission under the Education Rules, to which we have already made reference. Every employee needs a job. If we take such a view even in case of these lecturers, it would amount to hold that each other employee is a weaker section vis-a vis an employer and, therefore, every such contract of service would become unconscionable and liable to be struck off. The case of Central Inland Water Transport Corporation Vs. Brojo Nath Ganguly, which was fall out of Delhi Transport Corporation Vs. D. T. C. Mazdoor Congress and others (supra), therefore, had to be read as per the law declared by the Supreme Court that every contract must be judged independently in the light of the available facts. If that exercise is done, the contention raised by the petitioner loses its potency.

In the Khagesh Kumar's case (cited supra), the question was of regularisation of the clerks, who were on daily wage basis. The petitioners therein claimed the regularisation on the basis of the sporadic ad hoc appointments. The Supreme Court on the basis of the available rules held that where an employee was appointed on daily wages basis prior to 1.10.1986 and had put in three years' service excluding the breaks, he would be entitled to seek regularisation under Rule 4 (1) of Regularisation Rules provided he fulfilled the requirement of qualification under clause (ii) of the said Rule. For that purpose, he was given liberty to move appropriate authority for such regularisation. This case is heavily relied upon as words of said Rule 4(1) are almost identical except the date mentioned therein. This Rule appears in para 15 of the judgment of the Supreme Court. The Supreme Court referred to the Regularisation Rules in U.P. and observed that if the recruitment was made on the post of Registration Clerks on regular basis such employees should be given an opportunity of being considered for such appointment and they should be given relaxation in age requirement provided for such appointment under the Rules. So also during the process of selection weightage be given to their experience to the post of Registration Clerks and

suitable guidelines be framed for that purpose. It is precisely that, it has been done in this case also. Such Lecturers, who have put in three years of service and were on the service, have actually been given weightage of 5 percent bouns marks and they were also given relaxation of their age as would be evident from Rule 9 of the Education Rules, to which we have already made reference. This is how such view was taken by the Supreme Court in a reported decision Uttar Pradesh Mahavidyalaya Tadarth Shikhak Niyamitikaran Abhiyan Samiti, Varanasi Vs. State of U.P. and others reported in AIR 1987 SC 1772. This is also not a case wher4e a blanket relaxation was given by the Supreme Court. In fact the case of Khagesh Kumar would be more beneficial to the respondents than the petitioners because these Lecturers have been offered this opportunity by way of impugned advertisement. We do not find anything in Khagesh Kumar's case to support the contention of the petitioners that they are ad hoc workers. We have already clarified that merely using the magic term ad hoc worker does not clothe the petitioner with any rights in view of the peculiar wordings and language of the impugned Regularisation Rules. We are, therefore, of the clear opinion that in the first place, the petitioners could not be said to have any nexus with these rules as the impugned rule were not meant for the persons like the petitioners, who were entirely a different class. If they are held to be a different class altogether, there will be no question of finding any discrimination against them, much less on account of fixation of cut off date 30.06.1998.

20. Much clamour was made as to haw the State Government fixed this cut off date and that fixation of that cut off date itself was arbitrary act. We have already pointed out that the petitioners cannot challenge this aspect being a different class altogether. They were not on the scene on 30.06.1998 and the objective of the rule was entirely different. The persons to be benefited by those rules were also altogether different class. As regards the material available the State Government justified the same for fixing the cut off date. The State

Government claims that they have done it as in the erstwhile State of U.P. also the same date was taken. We do not find anything unreasonable in fixing that date because after all the employees for whom the benefit of consideration of regularisation was being contemplated by the rules were the ad-hoc employees of erstwhile U.P. There is nothing wrong if the State of Uttaranchal, therefore, took the lead from the State of U.P. in fixing that date. Even at the cost of repetition we again reiterate, our finding that the petitioners being the entirely different class and being entirely unconnected with the rules, have no locus to challenge the fixation of cut of date in these rules, which was not meant of them.

21. This bring us to the last consideration that the rule amounted to extra-territorial legislation. We have already held above that there is no question of these rules being held as extra-territorial legislation. True it is that employees contemplated under the rules were the U.P. employees, but in cannot be forgotten that admittedly they were made over to the State of Uttaranchal and the State of Uttaranchal had accepted them with open arms. In the wake of finding that they have cut their ropes and burnt their boats in so far as their return to the U.P. is concerned, the State of Uttaranchal has every right to decide their fate. We are not, therefore, prepared to strike down the rule, which was a piece of a beneficial legislation on the ground that it amounted to extra territorial legislation. This disposes the first three questions framed by us.

Question No. 4:

22. This question cannot be gone into atleast in case of these petitioners because none of them has claimed any status of the reserved category. All of them are of open category. However, since we found that the advertised posts were not keeping with the reservation percentage even shown in G.O. dated 18.07.2001 passed by the State of Uttaranchal, we posed a query to the Government

counsel as to how the advertisement and more particularly reservations there, could be justified. As a sequels to this query the Government pleader has come out with an affidavit, wherein in para 5, it is reiterated by the Deputy Secretary, Higher Education, Government of Uttaranchal, Dehradun that the State Government vide its letter no. 824/XXIV (1)/2004 dated 27.09.2004 has sent a requisition to the Public Service Commission for filling up the remaining 239 posts of Lecturers after calculating the number of posts available in the reserved category on the basis of the total strength and also taking into account backlog of the reserved categories posts earmarked for the reserved category, so as to fulfill the admissible quota as per the Government Policy. It is pointed out that out of the 239 posts, 129 post have been reserved for the Scheduled Caste; 37 for the Other Backward Classes and 35 posts for the Scheduled Tribes have been earmarked. Thus, the posts of reserved categories advertised in the impugned advertisement together with the posts of reserved categories earmarked in the Government requisition make full quota of the reserved categories on the basis of cadre strength of 974. The government has reiterated that instead of issuing a corrigendum to the advertisement, the Government has decided to fill up the remaining vacancies so that the reservation policy can be strictly implemented on the total strength of the cadre. It is for this purpose that the Government has suggested that it would not issue a separate corrigendum and would proceed with the interviews as the exercise is extremely important in view of the fact that students are suffering on account of paucity of Lecturers. We find this exercise to be bonafide and would expect the Government to come up with the advertisement for 239 posts immediately. For this purpose we are fixing the time limit of two months. If that is so, the challenge to the advertisement must necessarily go.

23. It was faintly murmured that before the reorganization of Uttar Pradesh, the question of reservation was governed by the U.P. Public Services (Reservation of Scheduled Caste, Scheduled Tribes and

Other Backward Classes) Act, 1994. It is then contended that since the Government of Uttaranchal has adopted the said Act, the provisions of reservation must be governed by that Act. Our attention was invited to section 3, wherein the percentage of reservation for the Scheduled Caste 21%, for the Scheduled Tribes 2% and for the other backward classes 27%, is provided. It was pointed out that by passing the Government Order dated 18.07.2001, this percentage is varied. Heavily relying on section 87 of the Uttar Pradesh Reorganisation Act, 2000, it was contended that once the U.P. Act was adopted, unless it was specifically altered, amended or repealed by a competent Legislature, the Government could not have effected a change in the percentage of reservation by simply passing a Government order. Heavy reliance is placed on the language of section 87 and, therefore, we are quoting the section as below:

> **"87. Power to adapt laws** – For the purpose of facilitating the application in relation to the State of Uttar Pradesh or Uttaranchal of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority."

In our opinion, the argument is completely untenable. Even if it is presumed that the Act was adopted, as it is (for which no evidence is placed before us), we completely fail to understand as to why would it be necessary to specifically amend or repeal or alter the provisions of the Act. That is not the scheme of the Section, nor can this be a proper interpretation. Now if the Government Order is passed by way of alteration of the provisions of the U.P. Act by a competent authority, it would be perfectly in order. Her, in this case it is not the case of the petitioners that the aforementioned Government Order has been passed without any authority. What the petitioners contend is that by operation of section 87, the Uttaranchal Government had adopted the whole Act. IN the first place, we do not see any support by way of any evidence before us. The contention then is that the

amendments must come onloy through the legislation. In our opinion, the section cannot be read narrowly. What the section mandates is that the appropriate Government, and in this case, the Uttaranchal Government may within two years from 09.11.2000 pass an order for making such adaptations or modifications of the law as may be felt necessary or expedient. Now if the Government order is passed on 18.07.2001, it is within two years from the date when the Uttaranchal Government came into existence and, therefore, Uttaranchal Government is perfectly justified in making adaptations or modification in the law by simply passing an order and that is precisely what it has been done. The language of the section further provides that these adaptations or modifications would continue to apply so long as they are not altered, repealed or amended either by the competent Legislature or other competent authority. We do not, therefore, see anything wrong in Uttaranchal Government passing the government order making it's own adaptation by changing the reservation percentage. We do not, therefore, see any force in the contention of the petitioners that the Government order dated 18.7.2001 is in any way defective or illegal or in contravention of section 87 of the U.P. Reorganisation Act,2000. The contention is, therefore, rejected. The question is disposed of accordingly.

Question Nos. 5 and 6:

23. This leaves us with the last contention that the petitioners should have been given salaries as regular lecturers and that they should be given regular time scale.

While considering the question of regularisation, we have already gone into the subject and we have held that the petitioners are not entitled to regularisation and they cannot rightfully claim the same. What goes for regularisation would also go for payment of salaries. In our opinion, the petitioners have been paid salary of

Rs.8000/- per month, which may no0t be identical with the scale of lecturers, but is commensurate to the salary of the lecturers, who are regularly appointed. The learned counsel Dr. R. G. Padia, however, very seriously urged that this Court had passed an order on 27.04.2004. The said order is as follows:

> "Heard Mr. R. G. Padia, learned counsel for the petitioners.
>
> Admit.
>
> Notices have been accepted by learned Chief Standing Counsel on behalf of the respondents no. 1,2 and 4 by Mr. U.K. Uniyal, Advocate on behalf of the respondent no.3, who pray for and are allowed three weeks time to file a counter affidavit.
>
> List on 27.05.2004.
>
> Until further orders of this Court, services of the petitioners shall not be terminated in view of the fact that the Uttaranchal (under the purview of the Public Service Commission) Regularisation of Ad hoc Appointment Rules, 2002 were enforced on 7th August, 2002 and the cut off date for regularisation is 30th June, 1998 when the State was not in existence. The employees who were appointed prior to 9th November, 2000 were employees of the State of U.P., therefore, prim facie, we are of the opinion that the fixing the cut off date as 30th June, 1998 is arbitrary.
>
> Office is directed to supply the copy of his order today."

On that basis, Dr. Padia said these teachers would continue to be in service or would at least be deemed to be in service and, therefore, they should be paid salaries at least till the decision of the writ petitions. We do not tend to agree with the contention entirely because obviously these teachers are not working as such. Therefore, on 20.7.2004, the Court had issued notices to the respondents to show cause as to why the order had not been complied with. In fact it is because of that, the matter was taken up for hearing. In the first place, the Government alone cannot be blamed for the pendency of these writ petitions because after the petitions were filed they were extensively amended by filing fresh affidavits, though the specific permission to amend the petitions was not taken. After fresh affidavits were filed by the petitioners from time to time, the Government side also took some time in filing the counter affidavits.

Therefore, we do not blame the Government. The arguments also went on for a considerable long time. Under these circumstances, we are of the opinion that the petitioners would be entitled to get the salary only upto the end of the session 2003-2004, and not further salary. We are aware that we are passing this order causing financial burden to the Government, but if the order of the Court was continuing and that order was not varied by the Court, then these teachers would be entitled to get the salary till the end of the Session 2003-2004. That is the only relief that can be given to the petitioners.

24. All the writ petitions are, therefore, dismissed except for the last relief that we have granted.

25. Under these circumstances, we see nor reason to order costs.

26. No other contention was raised us except the one, which we have considered in this judgment.

(V.S.Sirpurkar, C.J.)

(P.C.Verma, J.)

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